

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**REGGIE LITTLE**

ABERDEEN

**PLAINTIFF**

vs.

**Case No. 1:15CV28-GHD-DAS**

**SMITH & NEPHEW, INC. and  
JOHN DOES 1-10**

**DEFENDANTS**

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

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Plaintiff, Reggie Little (sometimes referred to herein as “Plaintiff”), by and through the undersigned counsel, Langston & Lott, P.A., brings this action and alleges as follows against Defendant, Smith & Nephew, Inc., formerly Smith & Nephew Richards Inc., (sometimes referred to herein as “Defendant”) and John Does 1-10 upon information and belief:

**NATURE OF THE ACTION**

1. This is an action for damages suffered by Plaintiff as a direct and proximate result of the Defendants’ negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution, labeling, and/or sale of the Smith & Nephew Self-Tapping Screw as part of the TRIGEN Humeral Nail System.

2. At all times material hereto, the Smith & Nephew Self-Tapping Screw was designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by the Defendant, Smith & Nephew, Inc., formerly Smith & Nephew Richards, herein as part of the TRIGEN Humeral Nail System.

**PARTIES, JURISDICTION & VENUE**

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, in that Plaintiff is a citizen of a State which is different from the States where Defendants are incorporated and have their principal places of business.

4. The amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

5. Venue in this district is appropriate under 28 U.S.C. § 1391.

6. Plaintiff, Reggie Little, is a natural person and a resident of the State of Mississippi.

7. The Defendant, Smith & Nephew Inc., formerly Smith & Nephew Richards, is a corporation organized under the laws of the State of Delaware, doing business in the State of Mississippi. Plaintiff believes the principal place of business of Defendant Smith & Nephew, Inc. at the time of filing this lawsuit and at the present time was, and is, the State of Tennessee. Defendant may be served with process by and through its registered agent for service: CT Corporation, 800 South Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710.

8. At all times material hereto, the Defendant, Smith & Nephew, Inc., formerly Smith & Nephew Richards, was engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling the Smith & Nephew Self-Tapping Screw as part of the TRIGEN Humeral Nail System.

9. At all relevant times, the Defendant, Smith & Nephew, Inc., expected or should have expected that its acts would have consequences within the United States of America, and the State of Mississippi in particular.

10. John Does 1 through 10 are the persons or entities, whether singular or plural, who or which caused or contributed to the Plaintiff's injuries as set forth herein. Plaintiff avers the identities of the John Doe Defendants are unknown or, if their names are known to Plaintiff, their identities as proper parties are not known to Plaintiff at this time, and their true names will be substituted by amendment under the Federal Rules of Civil Procedure, when ascertained.

### **FACTUAL ALLEGATIONS**

11. Defendants developed designed, formulated, manufactured, packaged, labeled, advertised, marketed, distributed and sold the Smith & Nephew Self-Tapping Screw as part of the TRIGEN Humeral Nail tray.

12. The Smith & Nephew Self-Tapping Screw is a FDA Class II medical product.

13. On or about February 27, 2014, Reggie Little underwent a left humeral nailing wherein the Smith & Nephew Self-Tapping Screw was used to distally lock a 10 x 28 cm nail down the Plaintiff's humerus.

14. The Smith & Nephew Self-Tapping Screw implanted in Plaintiff was later identified as being fractured on May 19, 2014 (less than three months).

15. Plaintiff now suffers from serious profound and permanent physical injury and disability attributable to the implantation of the Smith & Nephew Self-Tapping Screw,

which injuries have left Plaintiff Reggie Little unable to perform his normal, customary and daily activities.

16. Plaintiff Reggie Little alleges his injuries and disabilities are a result of an actionable defect in the Smith & Nephew Self-Tapping Screw and negligence on the part of Defendants.

17. As alleged herein, as a direct and proximate result of the Defendants' acts and omissions, and the unreasonably dangerous and defective characteristics of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System, Plaintiff Reggie Little suffered severe and permanent physical injuries, including but not limited to substantial pain and suffering, significant expenses for medical care and treatment, and a loss of earning capacity. Plaintiff's injuries and damages are permanent and will continue into the future. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein.

**COUNT I**  
**(NEGLIGENCE)**

18. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint as fully set forth herein.

19. At all times material hereto, the Defendants, had a duty to exercise reasonable care to consumers, including Plaintiff Reggie Little herein, in the design, development, manufacture, testing, inspection, packaging, promotion, marketing, distribution, labeling, and/or sale the Smith & Nephew Self-Locking Screw as part of the TRIGEN Humeral Nail System.

20. The Defendants breached their duty of reasonable care to Plaintiff Reggie Little in that they negligently designed, developed, manufactured, tested, inspected,

packaged, promoted, marketed, distributed, labeled, and/or sold the Smith & Nephew Self-Locking Screw.

21. Plaintiff Reggie Little's injuries and damages alleged herein were and are the direct and proximate result of the carelessness and negligence of the Defendants as follows:

- a. In its design, development, research, manufacture, testing, packaging, promotion, marketing, labeling, sale and/or distribution of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System;
- b. In representing that the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was safe for its intended use when, in fact, the product was unsafe for its intended use;
- c. In failing to perform appropriate post-market testing of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System; and
- d. In failing to perform appropriate post-market surveillance of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System.

22. The Defendants knew or should have known that consumers such as Plaintiff Reggie Little herein, would foreseeably suffer injury as a result of the Defendants' failure to exercise reasonable and ordinary care.

23. As alleged herein, as a direct and proximate result of the Defendants' acts and omissions, and the unreasonably dangerous and defective characteristics of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System, Plaintiff Reggie Little suffered severe and permanent physical injuries, including but not limited to substantial pain and suffering, significant expenses for medical care and treatment, and a loss of earning capacity. Plaintiff's injuries and damages are permanent and will continue

into the future. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein.

**COUNT II**  
**(STRICT PRODUCTS LIABILITY – DEFECTIVE DESIGN)**

24. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint as if fully set forth herein.

25. At all times material to this action, the Defendants were responsible for formulating, designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling and/or selling the Smith & Nephew Self-Locking Screw as part of the TRIGEN Humeral Nail System.

26. The Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System is defective and unreasonably dangerous to consumers.

27. The Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System is defective in its design or formulation in that it is not reasonably fit, suitable, or safe for its intended purpose and/or its foreseeable risks exceed the benefits associated with its design and formulation.

28. At all times material to this action, the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was expected to reach, and did reach, consumers in the State of Mississippi and throughout the United States, including Plaintiff Reggie Little herein, without substantial change in the condition in which it was sold.

29. At all times material to this action, the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendants in a defective and unreasonably dangerous condition at the time it was placed in the stream of

commerce in ways which include, but are not limited to, one or more of the following particulars:

- a. When placed in the stream of commerce, the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System contained unreasonably dangerous design defects and was not reasonably safe as intended to be used, subjecting Plaintiff Reggie Little to risks that exceeded the benefits of the products, including but not limited to the risks of developing severe and permanent physical injuries;
- b. When placed in the stream of commerce, the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was defective in design and formulation, manufacturing procedures, and/or metallurgical degradation or deficiency, making the use of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System more dangerous than an ordinary consumer would expect, and more dangerous than other risks associated with the other medical screws on the market;
- c. The Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System's design defects existed before it left the control of the Defendants;
- d. The Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was insufficiently tested; *i.e.*, the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System caused harmful side effects that outweighed any potential utility.

30. In addition, at the time the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System left the control of the Defendants, there were practical and feasible alternative designs that would have prevented and/or significantly reduced the risk of Plaintiff Reggie Little's injuries without impairing the reasonably anticipated or intended function of the product. These safer alternative designs were economically and technologically feasible, and would have prevented or significantly reduced the risk of Plaintiff Reggie Little's injuries without substantially impairing the product's utility.

31. Defendants knew or should have known that the ultimate users or consumers of the product, including Reggie Little, would not, and could not, or otherwise investigate, so as to discover the latent defects described above.

32. Plaintiff Reggie Little used the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System as intended in a manner reasonably foreseeable to the Defendants, and in a manner that was reasonably foreseeable by the Defendants as involving a substantial danger not readily apparent if adequate instructions regarding use and warnings of the danger were not provided.

33. Plaintiff Reggie Little was a foreseeable user of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System.

34. Defendants' actions described above were performed willfully, intentionally and with reckless disregard for the rights of the Plaintiff and the public.

35. As alleged herein, as a direct and proximate result of the Defendants' acts and omissions, and the unreasonably dangerous and defective characteristics of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System, Plaintiff Reggie Little suffered severe and permanent physical injuries, including but not limited to substantial pain and suffering, significant expenses for medical care and treatment, and a loss of earning capacity. Plaintiff's injuries and damages are permanent and will continue into the future. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein.

**COUNT III**  
**(STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT)**

36. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint as if fully set forth herein.



37. At all times material to this action, Defendants were engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System .

38. At all times material to the action, the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was expected to reach, and did reach, consumers in the State of Mississippi and throughout the United States, including Plaintiff Reggie Little herein without substantial change in the condition in which they were sold.

39. At all times material to this action, the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendants in a defective and unreasonably dangerous condition at the time it was placed in the stream of commerce in ways which include, but are not limited to, one or more of the following particulars;

- a. When placed in the stream of commerce, the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System contained manufacturing defects which rendered the product unreasonably dangerous;
- b. The Smith & Nephew Self-Locking Screws, used in the TRIGEN Humeral Nail System, manufacturing defects occurred while the product was in the possession and control of the Defendants;
- c. The Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail Systems were not made in accordance with the Defendants' specifications or performance standards; and
- d. The Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System s' manufacturing defects existed before it left the control of the Defendants.

40. As alleged herein, as a direct and proximate result of the Defendants' acts and omissions, and the unreasonably dangerous and defective characteristics of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System, Plaintiff Reggie Little suffered severe and permanent physical injuries, including but not limited to substantial pain and suffering, significant expenses for medical care and treatment, and a loss of earning capacity. Plaintiff's injuries and damages are permanent and will continue into the future. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein.

**COUNT IV**  
**(STRICT PRODUCTS LIABILITY – FAILURE TO WARN)**

41. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint as if fully set forth herein.

42. At all times material to this action, the Defendants were responsible for formulating, designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling and/or selling the Smith & Nephew Self-Locking Screw as part of the TRIGEN Humeral Nail System.

43. At all times material to this action, the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was expected to reach, and did reach, consumers in the State of Mississippi and throughout the United States, including Plaintiff Reggie Little herein, without substantial change in the condition in which it was sold.

44. The Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System is defective and unreasonably dangerous to consumers, because it the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was not

accompanied by adequate instructions and/or warnings to fully apprise consumers, including Plaintiff Reggie Little herein, of the full nature and extent of the risks and side effects associated with its use, thereby rendering the Defendants liable to Plaintiff.

45. Defendants knew or should have known that the ultimate users or consumers of the product, including Reggie Little, would not, and could not, or otherwise investigate, so as to discover the latent defects described above.

46. Plaintiff Reggie Little used the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System as intended in a manner reasonably foreseeable to the Defendants, and in a manner that was reasonably foreseeable by the Defendants as involving a substantial danger not readily apparent if adequate instructions regarding use and warnings of the danger were not provided.

47. Plaintiff Reggie Little was a foreseeable user of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System.

48. Defendants' actions described above were performed willfully, intentionally and with reckless disregard for the rights of the Plaintiff and the public.

49. As alleged herein, as a direct and proximate result of the Defendants' acts and omissions, and the unreasonably dangerous and defective characteristics of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System, Plaintiff Reggie Little suffered severe and permanent physical injuries, including but not limited to substantial pain and suffering, significant expenses for medical care and treatment, and a loss of earning capacity. Plaintiff's injuries and damages are permanent and will continue into the future. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein.

**COUNT V**  
**(BREACH OF EXPRESS WARRANTY)**

50. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint as if fully set forth herein.

51. Defendants expressly warranted that the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was safe and fit for use by consumers and users including Plaintiff Reggie Little for its intended purpose, that it was of merchantable quality, that it did not produce any dangerous side effects, and that it was adequately tested and fit for its intended use.

52. At the time of the making of the express warranties, Defendants knew or should have known of the purpose for which the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was to be used and warranted the same to be, in all respects, fit, safe, and effective and proper for such purpose.

53. At the time of the making of the express warranties, Defendants knew or should have known that, in fact, said representations and warranties were false, misleading, and untrue in that the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was not safe and fit for its intended use and, in fact, produces serious injuries to the use.

54. Plaintiff Reggie Little relied on the Defendants' express warranties.

55. Defendants breached said express warranties, in that the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was not safe and fit for its intended use.

56. As alleged herein, as a direct and proximate result of the Defendants' acts and omissions, and the unreasonably dangerous and defective characteristics of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System, Plaintiff Reggie Little suffered severe and permanent physical injuries, including but not limited to substantial pain and suffering, significant expenses for medical care and treatment, and a loss of earning capacity. Plaintiff's injuries and damages are permanent and will continue into the future. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein.

**COUNT VI**  
**(BREACH OF IMPLIED WARRANTIES)**

57. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint as if fully set forth herein.

58. The Defendants designed, manufactured, marketed, distributed, supplied and sold the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System as a surgical humeral fixation system.

59. At the time that the Defendants manufactured, marketed, distributed, supplied and/or sold the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System, they knew of the use for which the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was intended and impliedly warranted it to be of merchantable quality and safe and fit for such use.

60. Plaintiff Reggie Little reasonably relied upon the skill, superior knowledge and judgment of the Defendants.

61. Plaintiff Reggie Little purchased and used the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System for its intended purpose.

62. Due to the Defendants' wrongful conduct as alleged herein, Plaintiff Reggie Little could not have known about the nature of the risks and side effects associated with the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System until after he used them.

63. Contrary to the implied warranty for the subject products, the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System was not of merchantable quality, and was not safe or fit for its intended uses and purposes, as alleged herein.

64. As alleged herein, as a direct and proximate result of the Defendants' acts and omissions, and the unreasonably dangerous and defective characteristics of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System, Plaintiff Reggie Little suffered severe and permanent physical injuries, including but not limited to substantial pain and suffering, significant expenses for medical care and treatment, and a loss of earning capacity. Plaintiff's injuries and damages are permanent and will continue into the future. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein.

**COUNT VII**  
**(NEGLIGENT MISREPRESENTATION)**

65. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint as if fully set forth herein.

66. The Defendants had a duty to represent to the Plaintiff Reggie Little, and the public in general, that the Smith & Nephew Self-Locking Screw used in the TRIGEN

Humeral Nail System, had been tested and found to be safe and effective for its intended purpose.

67. The representations made by the Defendants were, in fact, false.

68. The Defendants failed to exercise ordinary care in the representation of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System while involved in their manufacture, sale, testing, quality assurance, quality control, and/or distribution of said product into interstate commerce in that the Defendants negligently misrepresented the subject product's risk of fracture.

69. Defendants breached their duty in representing the Smith & Nephew Self-Locking Screws, used in the TRIGEN Humeral Nail System, serious side effects to the medical and healthcare community, to the Plaintiff Reggie Little, and the public in general.

70. As alleged herein, as a direct and proximate result of the Defendants' acts and omissions, and the unreasonably dangerous and defective characteristics of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System, Plaintiff Reggie Little suffered severe and permanent physical injuries, including but not limited to substantial pain and suffering, significant expenses for medical care and treatment, and a loss of earning capacity. Plaintiff's injuries and damages are permanent and will continue into the future. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for Judgment against the Defendants as follows:

- a. Awarding actual and compensatory damages to the Plaintiff, incidental to Plaintiff REGGIE LITTLE's purchase and use of the Smith & Nephew Self-Locking Screw used in the TRIGEN Humeral Nail System in an amount to be determined at trial;

- b. Awarding punitive damages to the Plaintiff;
- c. Awarding pre-judgment and post-judgment interest to the Plaintiff;
- d. Awarding the costs and the expenses of this litigation to the Plaintiff;
- e. Awarding reasonable attorneys' fees and costs to the Plaintiff as provided by law; and
- f. Granting all such other relief as the Court deems necessary, just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, REGGIE LITTLE, hereby demands trial by jury as to all issues.

Dated: February 5, 2015.

Respectfully Submitted,

**REGGIE LITTLE,**

By: /s/ Casey L. Lott  
CASEY L. LOTT, MBN 101766  
Attorney for Plaintiff

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